IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	:	**Confirmation No. 6150**
Ingo GASSER	:	Atty Docket No. 2001_1252A
Serial No. 09/936,518	:	Group Art Unit 3637
Filed November 15, 2001	:	Examiner H.V. Tran
PULL-OUT GUIDE FITTINGS FOR DRAWERS	:	Mail Stop Appeal Brief

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Respectfully submitted,

Ingo GASSER

By _____
W. Douglas Hahm
Registration No. 44,142
Attorney for Applicant

WDH/ck
WENDEROTH, LIND & PONACK, L.L.P.
2033 K St., N.W., Suite 800
Washington, D.C. 20006-1021
Telephone (202) 721-8200
June 15, 2005

[Check No. G8785]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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PULL-OUT GUIDE FITTINGS FOR DRAWERS		

THE COMMISSIONER IS AUTHORIZED TO CHARGE ANY DEFICIENCY IN THE FEES FOR THIS PAPER TO DEPOSIT ACCOUNT NO. 23-0975

APPEAL BRIEF FILED UNDER 37 CFR § 41.37

Assistant Commissioner for Patents,

Sir:

The following is the Appellant's Brief, submitted in accordance with the provisions of 37 CFR 41.37.

Real Party in Interest

The real party in interest is Julius Blum Gesellschaft M.B.H of Hochst, Austria, the assignee of the present invention.

Related Appeals and Interferences

There are no known related appeals or interferences.

Status of Claims

Claims 1-17 have been cancelled. Claims 18-40 have been rejected in view of the prior art, and the rejection of these claims is appealed. A complete copy of the claims on appeal is provided in the attached Appendix I.

Status of Amendments

No amendments subsequent to the final rejection of November 16, 2004 have been made.

Summary of the Claimed Subject Matter

A description of the subject matter recited in the rejected claims will be provided below with reference to the written description and the drawings of this application. In this regard, the cited portions of the written description refer to the substitute specification filed February 20, 2004. In addition, with respect to the drawings, it is noted that new formal Figures 1A, 1B, 4A, 4B, 29A, 29B, and 30 were submitted on August 11, 2003.

The present invention is directed to a pull-out guide fitting for a drawer which allows a drawer to be fully extended out from a body in a smooth manner without jarring (see lines 1-5 of paragraph [0001] of the specification). In particular, as generally illustrated in Figures 1A, 1B, 2, and 3, the pull-out guide fitting includes a drawer track 5 (to be attached to a drawer1 when installed), a support track 3 (to be attached to a body sidewall 2 when installed), and a center track 6 arranged between the drawer track 5 and the support track 3 (see lines 1-3 of paragraph [0007] of the specification).

As explained in lines 1 and 2 of paragraph [0008] of the specification, the load between the support track 3 and the center track 6, and the load between the center track 6 and the drawer track 5 is transferred in a conventional manner by rolling elements such as rollers and/or sliders. Thus, the three-track arrangement (i.e., the combination of the support track, the drawer track, and the center track) allows a drawer 1 to be fully extended from a furniture body due to the additional reach provided by the center track (as illustrated in Figure 14). However, the additional center track 6 also provides the pull-out guide fitting with greater mass. This additional mass, in combination with the distance through which the drawer 1 must travel in order to be fully extended from the body, causes significant momentum to be generated by the drawer when being opened or closed. This momentum, in turn, can cause undesirable jarring when the drawer is fully opened or closed (see lines 4 and 5 of paragraph [0001] of the specification).

In order to avoid the jarring problem, the pull-out guide fitting of independent claim 18 further includes a damping device 7 arranged as described in lines 1 and 2 of paragraph [0013] of

the specification. In particular, as illustrated in the cross-sectional view of Figure 13, the damping device 7 is mounted in a manner so as to dampen a relative motion between the center track 6 and the drawer track 5 and/or the support track 3. In other words, the damping device 7 is mounted in such a way as to dampen the motion between the center track 6 and the drawer track 5 and/or to dampen the relative motion between the center track 6 and the support track 3 so as to prevent or significantly minimize any jarring when the drawer 1 reaches the fully opened or closed position.

Grounds of Rejection to be Reviewed on Appeal

Claims 18, 21-29, and 31-40 stand rejected under 35 USC 103(a) as being unpatentable over Great Britain Patent Application 2 245 158A ("the Tamura reference") in view of U.S. Patent 4,445,726 ("the Röck reference"); and claims 19, 20, and 30 stand rejected under 35 USC 103(a) as being unpatentable over the Tamura reference in view of the Röck reference, and further in view of European Patent Application 556 613A1 ("the Migliori reference").

Argument

In the final Office Action of November 16, 2004, the Examiner rejected independent claim 18 and dependent claims 21-29 and 31-40 as being unpatentable over the Tamura reference in view of the Röck '726 reference; and rejected claims 19, 20, and 30 as being unpatentable over the Tamura reference in view of the Röck '726 reference and further in view of the Migliori reference. In other words, the Examiner essentially maintained the prior art rejections initially set forth in the Office Action of March 12, 2004. In doing so, the Examiner asserted that a particular feature recited in independent claim 18, although not explicitly taught or even suggested in any of the applied references, was obvious in view of the combination of applied references. However, the Applicant respectfully disagrees with the Examiner's position, and requests that the Board reconsider and reverse the Examiner's prior art rejections for the reasons discussed below.

As noted in the remarks submitted with the Amendment filed August 11, 2004, independent claim 18 is directed to a guide fitting that comprises a damping device *operable to*

dampen a relative motion between a center track and a drawer track and/or a relative motion between the center track and a support track. In other words, independent claim 18 describes a specific relationship between the damping device, the drawer track, the support track, and the center track in order to achieve the damping effects discussed above in the Summary of the Claimed Subject Matter.

The Applicant acknowledges that pull-out guides with a drawer track, a support track, and a center track, such as the type taught in the Röck '726 reference, are well-known in the art. Furthermore, the Applicant acknowledges that damping mechanisms, such as the type taught in the Tamura reference, are also well-known in the art for reducing the shock of a drawer moving relative to the body of a piece of furniture. However, the Applicant respectfully submits that the relationship of the damping device with respect to the drawer track, the support track, and the *center track* as recited in claim 18 is not known or even suggested in the prior art. In other words, the Applicant respectfully submits that the *combination* of features *arranged as recited* in independent claim 18 is clearly patentable over the prior art of record.

As noted above, the Röck '726 reference teaches a well-known three-track pull-out guide fitting, including a drawer track, a support track, and a center track. The Tamura reference, on the other hand, discloses only a drawer track 7, a support track 3, and a damping device that can dampen a relative motion between the drawer track 7 and the support track 3. Neither reference, however, suggests a center track arranged with respect to a damping device so as to be involved in a damping process. Nonetheless, the Examiner asserted that such an arrangement would be obvious in view of the combination of the Tamura reference and the Röck '726 reference. However, the Applicant respectfully disagrees with the Examiner's position, as explained below.

The mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also *suggests* the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). In this case, the Examiner has still not provided any reason why one of ordinary skill in the art would be motivated to modify/combine the Tamura reference and the Röck '726 reference as suggested by the Examiner to obtain the invention recited in independent claim 18. In the remarks submitted with the Amendment filed August 11, 2004, the Applicant noted that it has been well-established that there must be some

clear motivation, suggestion, or teaching of the desirability of making *the specific combination* produced by the Applicant. See *In re Dance,* 160 F.3d 1339, 48 USPQ2d 1635 (Fed. Cir. 1998). In addition, the specific reasons why one of ordinary skill in the art would be motivated to select the references and to combine them in a manner so as to render the claimed invention obvious must be clearly set forth by the Examiner. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with *no knowledge of the claimed invention*, would have selected these components for combination in the manner claimed" (emphasis added)). This is particularly relevant in the present case, in which the difficulties of arranging the damping device as recited in claim 18 (explained in more detail below) would deter one of ordinary skill in the art from even attempting such an arrangement without a clear motivation.

As "evidence" of such motivation, the Examiner explains in item 10 on page 6 of the final Office Action of November 16, 2004 that "Röck '726 teaches the idea of providing a center track in order to allow the drawer to be pulled out of the body of a piece of furniture over its entire length and to facilitate the reinsertion of the drawer into the body of the furniture." As noted above, however, the Applicant acknowledges that such an arrangement is well-known in the art. The Examiner's statement does not, however, provide any specific reasons why one of ordinary skill in the art would be motivated to *modify* the Röck '726 reference by arranging the damping device as recited in claim 18.

In view of the lack of any clear teaching as to why one of ordinary skill in the art would arrange a damping device with respect to a center track as recited in claim 18, the Applicant noted in the remarks submitted with the Amendment filed August 11, 2004 that the Examiner is using impermissible hindsight in order to arrive at the determination that the invention is obvious in view of the applied references. In response to this statement, the Examiner noted in item 9 on page 5 of the final Office Action that a determination of obviousness is necessarily based upon hindsight reasoning as long as that reasoning "does not include knowledge gleaned only from the applicant's disclosure." However, because the Examiner has not explained where such knowledge has been obtained, the Applicant assumes that such knowledge must have impermissibly been gleaned *only* from the Applicant's own disclosure. As such, it is submitted

that the Examiner's obviousness rejection is improper and should be withdrawn.

In an effort to possibly address the lack of motivation to modify/combine the references to obtain the arrangement of the damping device with respect to the center track as recited in claim 18, the Examiner indicated that the arrangement of the damping device as recited in claim 18 would be obvious because it is well within the ability of one of ordinary skill in the art to position the damping device at different locations to dampen relative motion between various combinations of the tracks. The Examiner's apparent belief that only a minor, obvious modification of the teachings of the Tamura reference and the Röck '726 reference is necessary to produce the invention of claim 18 appears to be due to a lack of appreciation for the advantages gained and difficulties involved in arranging the damping device as recited in claim 18. In particular, the arrangement provides significant advantages with respect to the additional momentum and drawbacks caused by the presence of the center track. However, providing a drawer track, a center track, and a support track also creates significant difficulties when mounting a damping device so as to dampen a relative motion between the center track and at least one of the drawer track and the support track. In this regard, a drawing was prepared and initially submitted with the Request for Reconsideration filed on February 15, 2005 to illustrate these difficulties, and a copy of the drawing has been attached hereto as Appendix II. Appendix II includes Figure A, which is a cross-sectional view of the three tracks forming a typical embodiment of the invention of claim 18, and also includes Figures B and C, which are schematic views of a particular embodiment of the invention of claim 18.

As illustrated in Figure A, providing three separate tracks allows only a very small amount of space therebetween in which to locate the damping device. Figure B illustrates one embodiment of the pull-out guide fitting as recited in claim 18, in which the damping device is located so as to dampen the relative motion between the center track and the drawer track. In this view, the pull-out guide fitting is shown in the fully-open position, and space constraints for the damping device are not necessarily a concern. However, when the pull-out guide fitting is in the closed position as shown in Figure C, the space constraints due to the three tracks become a significant concern. It is submitted that the space constraints created by providing a center track in addition to a drawer track and a support track would deter one of ordinary skill in the art from

even attempting to modify the Tamura reference and the Röck '726 reference so as to dampen relative motion between the center track and at least one of the drawer track and the support track.. Thus, it is submitted that the present invention as recited in claim 18 is not a simple re-arrangement of parts as suggested by the Examiner.

As explained above, the combination of the Tamura reference and the Röck'726 reference does not disclose or even suggest the arrangement of a damping device as recited in claim 18. In addition, the Migliori reference also does not suggest such an arrangement. Therefore, one of ordinary skill in the art would not be motivated to modify or combine the Tamura reference, the Röck '726 reference, and the Migliori reference in order to obtain the invention recited in independent claim 18. Accordingly, it is respectfully submitted that independent claim 18 and the claims that depend therefrom are clearly patentable over the prior art of record.

Conclusions

In view of the above, it is respectfully submitted that claims 18-40 are not obvious in view of the combination of the Tamura reference, Röck reference, and the Migliori reference. Accordingly, the Board is requested to reverse the rejections set forth in the Final Office Action of November 16, 2004.

Respectfully submitted,

Ingo GASSER

By _____
W. Douglas Hahm
Registration No.44,142
Attorney for Appellant

WDH/ck
Washington, D.C.
Telephone (202) 721-8200
Facsimile (202) 721-8250
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APPENDIX I - Claims on Appeal

18. A pull-out guide fitting for a drawer, comprising:

a drawer track to be attached to a drawer;

a support track to be attached to a body sidewall;

a center track arranged between said drawer track and said support track;

rolling elements arranged between said drawer track and said center track, and arranged between said center track and said support track for allowing a transfer of the drawer between an open position and a closed position; and

a damping device operable to dampen a relative motion between said center track and at least one of said drawer track and said support track.

19. The pull-out guide fitting of claim 18, wherein said damping device comprises a hydraulic damping device.

20. The pull-out guide fitting of claim 18, wherein said damping device comprises a linear damping component including a cylinder and a piston arranged within said cylinder so as to be linearly movable within said cylinder.

21. The pull-out guide fitting of claim 18, wherein said damping device comprises a rotary damper component.

22. The pull-out guide fitting of claim 18, wherein said damping device includes at least two components operable to move relative to each other.

23. The pull-out guide fitting of claim 22, further comprising a stop on said support track, said damping device being mounted on said drawer track so as to be operable to engage said stop.

24. The pull-out guide fitting of claim 18, wherein said damping device is operable to

dampen a relative motion only between said drawer track and said center track.

25. The pull-out guide fitting of claim 24, further comprising a stop on said center track, said damping device being mounted on said drawer track so as to be operable to engage said stop.

26. The pull-out guide fitting of claim 18, wherein said damping device is operable to dampen a relative motion only between said center track and said support track.

27. The pull-out guide fitting of claim 26, further comprising a stop on said center track, said damping device being mounted on said support track so as to be operable to engage said stop.

28. The pull-out guide fitting of claim 18, wherein said damping device is operable to dampen a relative motion between said center track and said support track, and also to dampen a relative motion between said drawer track and said center track.

29. The pull-out guide fitting of claim 28, further comprising a first stop on said drawer track and a second stop on said support track, said damping device being mounted on said center track so as to be operable to engage said first stop and said second stop.

30. The pull-out guide fitting of claim 28, wherein said damping device comprises:
a pair of racks each having a toothed rack profile; and
a pinion for engaging said pair of racks.

31. The pull-out guide fitting of claim 18, further comprising a stop formed of plate material and mounted on at least one of said drawer track, said center track, and said support track so as to extend radially therefrom.

32. The pull-out guide fitting of claim 18, further comprising a coupling attachment

for coupling said drawer track and said center track, said damping device being arranged so as to be operable to dampen a relative motion either between said drawer track and said support track or between said center track and said support track.

33. The pull-out guide fitting of claim 32, further comprising a control component for controlling a relative movement between said drawer track, said center track, and said support track, said control component being operable to control the relative movement only over a portion of a path of movement of the drawer.

34. The pull-out guide fitting of claim 18, further comprising a control component for controlling a relative movement between said drawer track, said center track, and said support track.

35. The pull-out guide fitting of claim 18, wherein said damping device comprises:
a rack having a toothed rack profile; and
a pinion for engaging said rack.

36. The pull-out guide fitting of claim 35, further comprising a stop on one of said drawer track, said center track, and said support track, said damping device being arranged such that an end of said rack engages said stop when the drawer is partially closed.

37. The pull-out guide fitting of claim 36, further comprising a compression spring arranged to bias said rack of said damping device toward said stop.

38. The pull-out guide fitting of claim 18, wherein said damping device comprises a fluid damping device including a damping fluid medium.

39. The pull-out guide fitting of claim 38, wherein said damping fluid medium of said fluid damping device comprises a gas.

40. The pull-out guide fitting of claim 38, wherein said damping fluid medium of said fluid damping device comprises air.

FIG. A

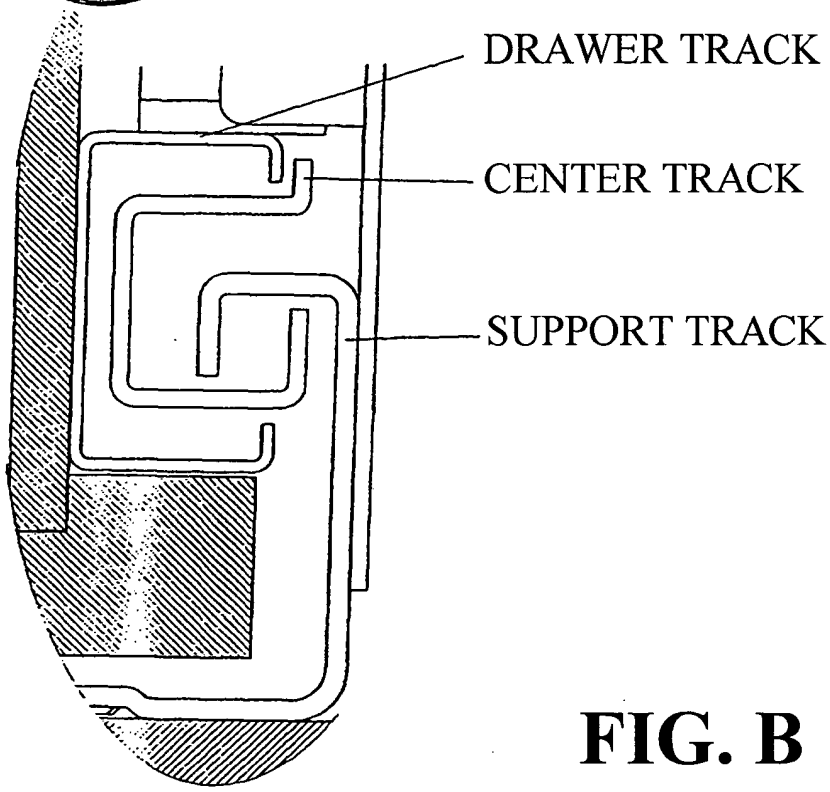
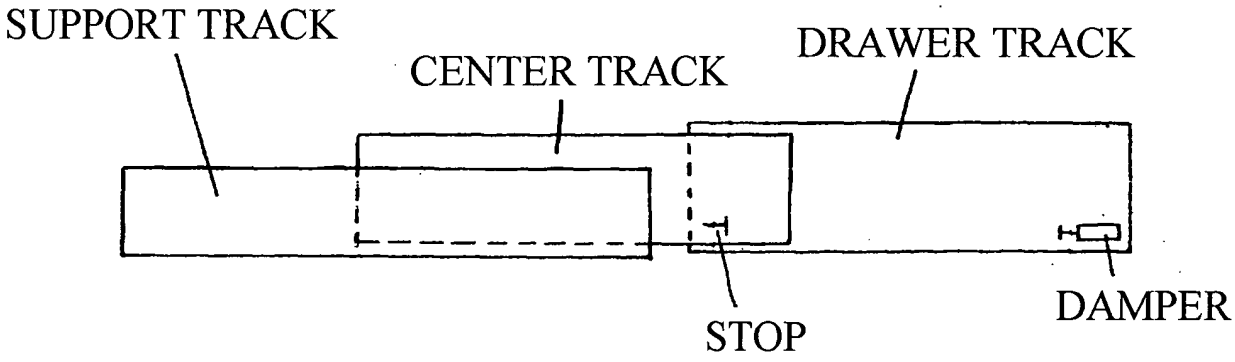


FIG. B



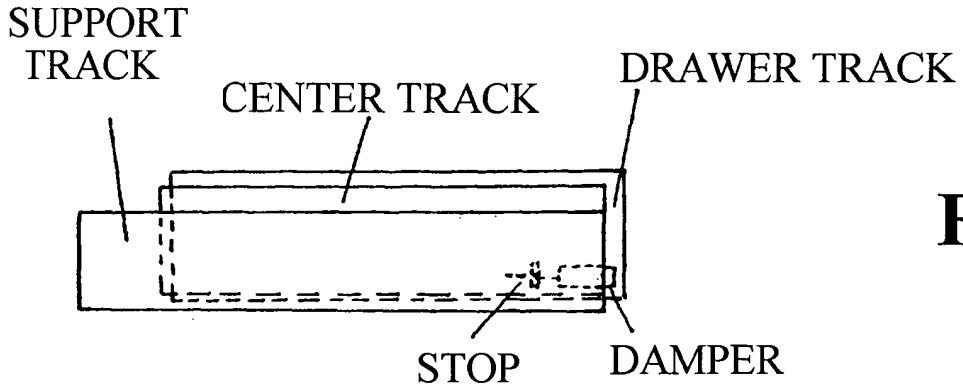


FIG. C